

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3618 of 1987

Date of decision: 10-10-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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S A SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR JF SHAH for Petitioner

Ms. Siddhi Talati for Respondent No. 1

MR SK JHAVERI for Respondent No. 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/10/97

ORAL JUDGEMENT

The petitioner who was working on the post of District Malaria Officer in the office of respondent No.2 was, under order dated 28th November, 1981, sent on deputation as Biologist in the office of respondent No.3 in place of one N. C. Shah who also belongs to the same cadre of District Malaria Officer. Shri N. C. Shah was getting deputation allowance while working as biologist in the office of respondent No.3, as it transpires from the order dated 1st July, 1980 of the Government, copy of which is filed on record of the special civil application at annexure-E. The petitioner was also paid deputation allowance, but later on his terms and conditions of deputation were laid down under resolution of the respondent Government dated 25th October, 1985 wherein one of the terms was that he shall not be allowed to draw any deputation allowance. Copy of this resolution is placed on record of the special civil application at annexure-B. Consequence of this resolution would have been twofold first to discontinue the benefit of deputation allowance of the petitioner which he was getting and secondly consequential recovery of the amount of deputation allowance paid to him for the interregnum. This resolution has been challenged by the petitioner before this court.

2. None of the respondents has filed reply to the special civil application. Learned counsel for the petitioner contended that he has been placed on deputation in place of Shri N.C. Shah who was also on deputation and was getting deputation allowance. On his retirement, on those terms and conditions, the petitioner should have been entitled to get the benefit. It has next been contended that when the petitioner was sent on deputation under order dated 28-11-1981 to the office of respondent No.3 it was not made known to him, nor was it a condition of deputation that he will not get deputation allowance. In case he would have been sent on deputation, on condition that he will not be getting deputation allowance, he would not have accepted the same. Lastly, the learned counsel for the petitioner contended that after about four years of deputation terms and conditions of his deputation have been laid down, which is highly arbitrary and unjust. On the other hand the counsel for respondent No.3 submitted that respondent No.3 has to act in accordance with Government orders. So

far as respondents No.1 and 2 are concerned, learned counsel for the respondents contended that it is the prerogative of the respondents to put any condition while sending its employee / officer on deputation to respondent No.3, to which no exception can be taken. Further it has been contended that even if earlier when Mr. Shah was sent on deputation the respondents decided to give deputation allowance, that will not give any right to the petitioner to claim any such benefit.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Deputation, normally of a Government employee or officer, is made with prior consent of the concerned employee or officer. It is not in dispute that when the petitioner was sent on deputation to respondent No.3 as Biologist, it was not a condition put to him that he will not get any deputation allowance. It is also not in dispute that the petitioner has been sent on deputation against the post which fell vacant due to retirement of one Mr. N.C.Shah, who admittedly was sent on deputation with clear condition to draw deputation allowance at a rate as specified in the order of deputation. Not only this, respondent No.3 had given him deputation allowance for all these years. In view of this position, the petitioner has not been mistaken to go with the presumption and assumption that he will get deputation allowance and in fact as stated earlier he had been given deputation allowance. After four years of his posting on deputation terms and conditions of deputation have been laid down and condition has been put that he will not get deputation allowance. That condition could have been insisted upon only where the petitioner had agreed to it and not otherwise. In case the petitioner would have been sent on deputation with clear understanding that he will not get deputation allowance, there would have been possibility of the petitioner not accepting the same. I do not find any justification in the facts of the case to deprive the petitioner the benefit of deputation allowance. Condition No.3 in the order annexure-B, therefore, cannot be allowed to stand and permitted to be given effect to sofar as it relates to the petitioner.

4. In the result this special civil application succeeds and the same is allowed. Condition No.3 contained in the order annexure-B dated 25th October, 1985 to the extent it relates to the petitioner is declared as illegal and arbitrary. The petitioner is entitled to all consequential benefits flow from the declaration of the aforesaid condition as illegal. Rule made absolute in the aforesaid terms. No order as to costs.

